

Tracey Lee Simmons (“Simmons”) was found to have violated the conditions of his probation. The Madison Superior Court revoked Simmons’s probation and ordered that his two-year suspended sentence be executed at the Department of Correction. Simmons appeals from the revocation of his probation, raising the following issue: whether the trial court abused its discretion when it ordered him to serve his previously suspended two-year sentence. Concluding that the trial court properly sentenced Simmons, we affirm.

Facts and Procedural History

On May 19, 1999, Simmons was charged with two counts of Class C felony child molesting and two counts of Class D felony criminal confinement. On December 14, 1999, Simmons entered into a plea agreement with the State, whereby he pleaded guilty to all four counts against him. Appellant’s App. pp. 25-26. That same day, the trial court sentenced Simmons to a term of eight years, with six years executed and two years suspended to probation. Appellant’s App. p. 37.

Simmons began serving his probationary period on or about June 24, 2004. On August 16, 2005, the Madison County Probation Department filed its Notice of Probation Violation, alleging:

3. That [Simmons] violated those conditions of [his] sentence and/or probation as follows:
 - a) Obtain G.E.D. and provide written verification to Probation Department;
 - b) Obtain Substance Abuse Evaluation at treatment facility approved by the Probation Department within 30 days of sentencing/release, comply with treatment recommendations, and provide written verification of successful completion of said program to the Probation Department;

- c) Failed to maintain employment and/or verify employment to the Probation Department[.]

Appellant's App. p. 43 (emphasis in original). On August 25, 2005, an Amended Notice of Probation Violation was filed, alleging that Simmons failed to "[a]bstain from the use of alcoholic beverages/illicit drugs during the period of probation[.]" Appellant's App. p. 45. Subsequently, on November 2, 2005, a Second Amended Notice of Probation Violation was filed, alleging the following violations:

- e) Other Possession of Pornography;
- f) Not to knowingly associate with any person who has been convicted of a felony except for just cause. Allegedly, [Simmons] admitted to having contact with a convicted felon;
- g) Not to have any unsupervised contact with children under 18. Allegedly, [Simmons] had a 17 year old inside his residence on 11/01/05, unsupervised.

Appellant's App. p. 47 (emphasis in original).

At the conclusion of an evidentiary hearing on November 21, 2005, the trial court revoked Simmons's probation and ordered him to serve the balance of his original two-year suspended sentence. Appellant's App. p. 49. Simmons now appeals. Additional facts will be provided as necessary.

Discussion and Decision

We review a trial court's decision to revoke probation and a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied (citing Indiana Code § 35-38-2-3(g) (2004)).

Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment. Brabandt v. State, 797

N.E.2d 855, 860 (Ind. Ct. App. 2003) (citing Bonner v. State, 776 N.E.2d 1244, 1247 (Ind. Ct. App. 2002), trans. denied). These restrictions are designed to ensure that the probation serves as a period of genuine rehabilitation and that the public is not harmed by a probationer living within the community. Id. Moreover, as we have noted on numerous occasions, a defendant is not entitled to serve a sentence in a probation program; rather, such placement is a “matter of grace” and a “conditional liberty that is a favor, not a right.” E.g., Strowmatt v. State, 779 N.E.2d 971, 976 (Ind. Ct. App. 2002); Davis v. State, 743 N.E.2d 793, 794 (Ind. Ct. App. 2001), trans. denied; Antcliff v. State, 688 N.E.2d 166, 169 (Ind. Ct. App. 1997). See also Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999).

Indiana Code section 35-38-2-3(g) provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person’s probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(g) (2004).¹

As an initial matter, we agree with the State that although Simmons’s repeated statement of the issue questions the propriety of his probation revocation, his argument merely challenges the propriety of the penalty imposed, namely the imposition of the original two-year suspended sentence. See Br. of Appellee at 6. As such, we need only

¹ Indiana Code section 35-38-2-3 was amended, effective July 1, 2005, to explicitly allow a trial court to order execution of “all or part of” a probationer’s suspended sentence. P.L. 13-2005. See also Stephens v. State, 818 N.E.2d 936, 941-42 (Ind. 2004).

address whether the trial court abused its discretion when it ordered Simmons to serve the balance of his original sentence.

The evidence in the record establishes that Simmons admitted the alleged violations, though he offered various explanations for his conduct. Simmons failed to obtain a G.E.D. and failed to complete substance abuse treatment at Sower of Seed Counseling. He cited his medical conditions, which consisted of two ruptured discs, arthritis in his back, and a sciatic nerve disorder as justification for his failure to complete both the G.E.D. and the substance abuse counseling. Tr. pp. 5-8.

Simmons admitted that he failed to maintain employment in violation of his agreed upon probation terms:

Q: Tracey, also . . . that you failed to maintain employment and verify employment to the Probation Department. Do you admit that?

A: Yes, I do.

Q: Had you been working at all?

A: No, I have not.

Tr. p. 8. In addition to his admission regarding the failure to maintain employment, Simmons admitted to the use of marijuana during probation and possession of pornography. Tr. pp. 9-10. Furthermore, evidence was presented that Simmons associated with a convicted felon and had unsupervised contact with a juvenile. Tr. pp. 10-12.

Probation is a matter of grace to be viewed as a conditional liberty, not a right. See Brabandt, 797 N.E.2d at 860. Under these facts and circumstances, the trial court did

not abuse its discretion when it ordered Simmons to serve the balance of his previously suspended two-year sentence.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.